

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:

Gregory and Diane Tankersley,
Debtors.

Case No. 04-32402
Chapter 7

_____/

Timothy Hammond, et al.,
Plaintiffs,

v.

Adv. Pro. 05-4241

Concept One Mortgage Corp., et al.,
Defendants.

_____/

Opinion Regarding Order To Show Cause

This matter is before the Court on the Court's March 28, 2005 Order to Show Cause. The order requires plaintiffs to show cause why the adversary proceeding should not be remanded to the Genessee County Circuit Court. On February 18, 2005, the debtors' discharge was denied. On April 18, 2005, the Court held a hearing on the Order to Show Cause why the case should not be remanded to the Genessee County Circuit Court in light of the denial of the discharge.

This cause of action was originally filed in 2002 in the Genessee County Circuit Court. In this lawsuit, plaintiffs claim that the defendants engaged in various violations of Michigan's consumer fraud statute, and illegally steered business to each other without proper disclosure to consumers. Plaintiffs also assert that Klear Title improperly charged them for title insurance without issuing them policies. Prior to removal, the circuit court granted a motion for class certification and granted a motion for partial summary disposition as to liability against Concept

One, Klear Title, Hopper and GMM.

On December 20, 2004, Defendant Countrywide Home Loans, Inc., removed the proceeding to the United States District Court for the Eastern District of Michigan. Because Gregory and Diane Tankersley are co-defendants, Countrywide and the other non-originating defendants assert that the case is related to the Tankersleys' bankruptcy case. The non-originating defendants assert that the adversary proceeding is related to the Tankersleys' bankruptcy case because it "could conceivably" have an effect on the property of the Tankersleys' estate that is currently being administered." The non-originating defendants argue that if the motion to dismiss the adversary proceeding is successful, the only claims left to be adjudicated are pre-petition claims against the Tankersleys, and if the motion to dismiss is not granted, many if not all of the non-originating defendants will have contingent claims for indemnification and/or contribution against Tankersley.

A court may, in its discretion, abstain from hearing a case under 28 U.S.C. § 1334(c)(1). This section provides, "Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

When determining whether permissive abstention is appropriate, this Court has applied the following non-exclusive factors:

- 1) the effect or lack of effect on the efficient administration of the estate if a court abstains;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable state law;
- (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims

from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of this court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of nondebtor parties; and (13) any unusual or other significant factors.

Kmart Creditor Trust v. Conaway (In re Kmart Corp.), 207 B.R. 586, 597 (Bankr. E.D. Mich. 2004).

The Court makes the following findings: There will not be a negative effect on the administration of the Tankersleys' bankruptcy case if the Court abstains from hearing this adversary proceeding. This adversary proceeding involves predominately state law issues. The only jurisdictional basis for the Court's involvement is § 1334(b). This adversary proceeding would be a burden on this Court's docket. The plaintiffs have made a jury demand. There are several nondebtor parties in this proceeding.

In light of the foregoing findings, the Court concludes that as to the nondebtor defendants, the Court does not have jurisdiction, or that jurisdiction is so tenuous that discretionary abstention is appropriate.

The Court further concludes that the adversary proceeding should be dismissed as to the debtors, without prejudice to the plaintiffs' right to file proofs of claim.

Accordingly, the adversary proceeding will be dismissed as to the debtors, without prejudice to the plaintiffs' right to file proofs of claim. As to the other defendants, the matter will be remanded to the Genessee County Circuit Court.

The Court will enter an appropriate order.

_____/s/_____
Steven Rhodes
Chief Bankruptcy Judge

Entered: July 27, 2005

cc:

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